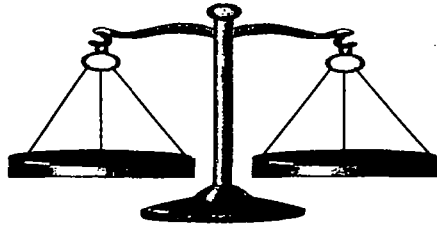


SITE: SDS MedWaste
 BREAK: 10.1
 OTHER: 2

ENVIRONMENTAL ACCOUNTABILITY DIVISION OFFICE OF LEGAL SUPPORT



ROUTING AND TRANSMITTAL SLIP		
TO:	INITIALS:	DATE:
1. S. Southall	<i>SS</i>	8-26-05
2. K. West	<i>KW</i>	8-29-05
3. R. Tanasijevich <i>KW acting</i>	<i>KW</i>	8-29-05
4. B. Richardson <i>corrections</i>	<i>BR</i>	8-29-05
5. H. Wilkerson <i>C. Williamson</i>	<i>CW/SS</i>	8-30-05
6. T. Moore <i>MP</i>	<i>MP</i>	9/2/05
7. R. Brown	<i>RB</i>	9-2
ACTION REQUESTED: Approval of Comfort Letter for Mayor of Hampton, South Carolina for the Safety Disposal System of South Carolina, Inc./SDS MedWaste Superfund Site.		
FROM: S. SOUTHALL		X: 2-9577

*Pls give copy of signed + dated letter
to Kat West*



ISSUE Date: *8/31/05* Please Expedite



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SITE: SDS Medwaste
BREAK: 101
OTHER: 2

SEP 2 2005

Honorable John Rhoden, Mayor
City of Hampton
608 1st Street West
Hampton, SC 29924

SUBJECT: SDS Medwaste, Inc. Superfund Site
City of Hampton, Hampton County, South Carolina

Dear Mayor Rhoden:

I am writing in response to your respective interests in acquiring portions of the SDS Medwaste, Inc. Superfund Site ("Site") which is located in the City of Hampton, Hampton County, South Carolina. This letter follows discussions between you and Ms. Kathleen West of the United States Environmental Protection Agency ("EPA") concerning the City of Hampton's interest in municipal development activities at this Site. This letter is provided solely for informational purposes and does not provide any release from Superfund liability.

Superfund Law

Congress passed the Superfund law (legally known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.) in response to the growing concern over health and environmental risks posed by hazardous waste sites. The Superfund law required EPA to establish the Superfund program to address these sites. Contaminated sites are discovered by citizens, businesses, and local, state, or federal agencies. After a potential hazardous waste site is reported to EPA, the available information is recorded in EPA's data management system for Superfund which is known as the Comprehensive Environmental Response and Liability Information System ("CERCLIS"). You can find the CERCLIS database at www.epa.gov/superfund/sites/cursites/index.htm.

Site History and Status

The Site is approximately ten acres in size and is located in a residential and industrial area at 100 Mill Street in the City of Hampton, Hampton County, South Carolina. The Site is a former medical and specialized waste incinerator and transfer station. It is no longer in use due to actions by the South Carolina Department of Health and Environmental Control ("SCDHEC") and the Safety Disposal Systems of South Carolina, Inc.'s ("SDS") bankruptcy.

In February 2002, SCDHEC placed SDS under an Administrative Order. The violations cited within the Order included problems with emissions monitoring equipment, improper storage of ash, and inappropriately stored containers and bags of infectious waste at the Site. SCDHEC took control of the property and mobilized their contractor to secure the property and assess the hazards to the surrounding community. SCDHEC referred the Site to the EPA to complete the removal.

In February 2002, EPA arrived at the Site to investigate and address the medical waste stored in tractor trailers, a large pile of incinerated material, untreated wastewater, and drums located on-Site. It was determined during the initial investigation that approximately 5,000 tons of incinerated ash waste, 150,000 gallons of untreated wastewater, 93 steel and polyvinyl drums of corrosive materials were on Site. There was also pharmaceutical wastes, waste oil, water treatment materials, and several pallets of broken, empty glass vials.

In August 2002, EPA conducted a removal assessment during which EPA collected two solid and one water sample. The two solid samples were obtained from the incinerated waste material pile and analyzed for toxicity characteristic leaching potential and total metals, pesticides, and cyanides. The results from the total metals analyses of the solid confirmed an exceedence of the Preliminary Remediation Goals for Industrial Soil for total chromium. A waste sample was collected from the sump. The water was analyzed for biological oxygen demand, chemical oxygen demand, total suspended solids, fecal coliform, oil and grease, total organic compound, and metals. The results indicated levels of metals that exceeded the Maximum Contaminant Levels and Drinking Water standards for arsenic, barium, cadmium, chromium, lead and nickel.

The potential for human exposure and environmental impact from the medical waste and airborne contaminations from the exposed incinerated waste pile was present. The Site's storm water run-off pond was very close to capacity. During a heavy rain event, the potential for the wastewater to migrate off-Site and be released into the surface water was very likely. This type of release would adversely affect down stream surface water users and bodies of water, thus presenting an imminent and substantial threat to human populations and the environment.

EPA removed the imminent environmental threats found at the Site and does not believe that further site assessment work is necessary. You may want to discuss the Site with SCDHEC to obtain the State's perspective.

Bona Fide Prospective Purchaser

In January 2002, the Superfund law was amended by Congress to encourage prospective purchasers to buy and redevelop Superfund and brownfield property. Prior to this amendment, purchasers of Superfund sites were potentially liable for the cleanup of the contaminated property upon purchasing the property. The new amendment allows purchasers to buy Superfund sites and avoid that potential liability by qualifying as a 'bona fide prospective purchaser' ("BFPP").

A prospective purchaser can qualify as a bona fide prospective purchaser by satisfying the criteria in the bona fide prospective purchaser provision found in Section 101(40) of the Superfund law. A prospective purchaser must achieve and maintain bona fide prospective purchaser status for as long as they own the property to avoid the potential Superfund liability. The bona fide prospective purchaser provision states that a person meeting the criteria of Section 101(40) of the Superfund law is protected from Superfund liability for existing contamination; however, to the extent that EPA's cleanup of the contamination increases the fair market value of the property, EPA may have a windfall lien on the property, which will be discussed on a site-specific basis in a following section of this letter.

The bona fide prospective purchaser provision states that a person meeting the criteria of Section 101 (40) is protected from CERCLA liability. To qualify as a bona fide prospective purchaser a person must meet certain threshold criteria and satisfy certain continuing obligations. I have enclosed a copy of the March 6, 2003 Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements") for your convenience. The bona fide prospective purchaser provision is designed to be self-implementing, meaning that the purchasers are responsible for achieving and maintaining bona fide prospective purchaser status for the entire time they own the property. You will need to assess whether you satisfy each of the statutory conditions for the bona fide prospective purchaser provision and continue to meet the applicable conditions.

Superfund Lien

EPA has not perfected a Superfund lien on this Site and does not intend to perfect a Superfund lien on property owned by a purchaser that is not a potentially responsible party under the Superfund law.

Windfall Lien

The September 16, 2003 "EPA Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA" ("Windfall Lien Policy"), provides that EPA, in an exercise of its enforcement discretion, will generally not perfect a CERCLA § 107(r) windfall lien when the conditions and criteria described in the Windfall Lien Policy are met. Based upon the information currently available to EPA, EPA believes that the Windfall Lien Policy applies to your situation. Specifically, EPA believes that, consistent with the Windfall Lien Policy, your situation falls under the Post-Cleanup Acquisition sections of the guidance, and therefore, EPA does not intend to file a windfall lien on the property unless new information not previously known to EPA is discovered. I am enclosing a copy of the Windfall Lien Policy for your review.

EPA remains dedicated to facilitating the redevelopment of contaminated properties and hopes this information is useful to you. If you would like to meet with EPA to discuss this letter, please feel free to contact me at (404) 562-9577. If you have technical questions please feel free to contact Carter Williamson, On-Scene Coordinator at (404) 562-8742.

Sincerely,

A handwritten signature in black ink, appearing to read "Stedman S. Southall". The signature is fluid and cursive, with the first name being the most prominent.

Stedman S. Southall
Associate Regional Counsel

Enclosures:

- (1) Common Elements Guidance
- (2) Windfall Lien Guidance